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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,087	12/30/2003	Clarke Berdan II	25401A	7962
22889	7590	12/10/2007		
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			EXAMINER DICUS, TAMRA	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/749,087	Applicant(s) BERDAN ET AL.	
	Examiner Tamra L. Dicus	Art Unit 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The prior rejections are withdrawn due to Applicant's amendments.

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

~~4-5~~

2. Claims 1-3, <sup>4</sup>6-9, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 is not clear in that it is not clear if the body has an edge because prior to mentioning an edge, it is never stated a body had an edge. It is not clear what has a second density, i.e. the body or edge. It is not clear if a first material has a first and second density. The specification provides no direction as to what material makes a greater or lower density difference. It is not clear where the edge is in relation to the body. It is not clear where the surface is in relation to the body or edge. Similar rationale applies to and effects claims 6-7. Further to claim 6, the panel is not in the body of the claim, thus it is not clear where the decorative surface is in relation to the panel. Same rationale applies to the substrate, edge and surface of claim 7. Thus the overall structure is not clear.

4. Claim 3 recites an edge that is from a substrate from a material. It is not clear if the edge comprises a substrate of a material or the edge and substrate produce a laminated element each of the material or a blend. An "acoustic substrate" is not clear what material this is as nothing in the claim recites a material, but a function. Similar rationale applies to and effects claims 8-9. Thus the overall structure is not clear.

5. To claim 18, it is not clear if the body has sides, further not clear to the quantity.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3 and 5-12 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,925,765 to Fay et al.

8. Fay teaches a decorative acoustic panel comprising: a main body (insulation panel 24 or facing sheet 22/32 (both elements suffice as bodies), FIG. 1 and associated text) formed of a first material (facing 22 is a sheet 32 comprised of nonwoven material or high or low density polyethylene or propylene (PE, PP), insulation 24 of PP fibers or other organic fibers) inherently comprising a first density; at least one peripheral edge formed of said first material (inherent to the structure see FIG. 1 showing the edges, also see tabs 34 and tab strips 38 of PP or PE, laminations (reinforce) and nonwoven materials (on opposing left and right sides, per instant claim 11) and having a second density (because the materials 24, 32 are different the density is different) said second density being greater than said first density is inherent depending upon which element comprises the second density (it appears from the instant specification that a panel is of fibrous material, thus because the same material is used and folded, this limitation is met). Fay teaches glass

fibers have a density of 0.3 to 1.6 lbs/ft<sup>3</sup> (5:20) of layer 24, thus because the edge is different material than glass fibers, it must be greater or less than, again, depending upon what material is attributed to which element. The edge said is folded (compressed) about a fold point (see FIG. 1 with 34 laying flat and flush, see also FIG. 9 showing fold point 42 and thus having compressed regions) and an inherently decorative surface because the material is the same, it functions as a decorative one. Claims 1-3, 5-12 are met.

Further to claims 5-10, product by process limitations such as formed by compressing, rotating, is affixed, is applied as recited are given little weight in a product claim. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698. Both Applicant's and prior art reference's product are the same.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay et al. (US 6,925,765) in view of US Hoffman, Jr. (US 3835604 A).

11. Fay essentially teaches the claimed invention.

12. Fay also shows in FIG. 9 the extension and back surface as claims 16 -18. The sides are shown as FIG. 9 is the cross direction and thus includes all sides (further the construction is for framing, which includes all four sides). Fay also shows double folding to extend from panel to panel, in FIG. 14, containing all the elements of FIG. 1 (claim 15).

13. Fay does not teach decoration as per instant claim 13.

14. Hoffman, Jr. teaches a similar folded facing and insulation panel wherein a principal objective of his invention is to provide building insulation of the general kind referred to with a facing sheet having a decorative pattern such as indicia, so that the installed appearance of the insulation is aesthetic or attractive (1:40-55, 4:1-15, Fig. 1 and Fig. 1a and associated text). The facing and insulation are also of foil (aluminum) kraft paper as Fay.

15. It would have been obvious to one having ordinary skill in the art to have modified the panel of Fay to include decoration as claimed for aesthetic or attractive appearance as taught by Hoffman, Jr. cited above. While the decoration is shown on the edges, it would have been obvious to extend it throughout the entire body to further make the entire panel attractive.

16. Further to claim 19, While Fay and Hoffman do not explicitly recite a nonlinear shape, Chenoweth teaches polyester fibers for nonwovens are shaped as desired, moreover, it would have been obvious to shape an edge in a non-linear shape dependent upon what the edge is going to insulate as in going around a non-linear object. Moreover, it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284. Size of an article ordinarily is not a matter of invention. The size and thickness recitations are all

deemed matters of choice involving differences in degree and/or size and are not patentable distinctions. In re Rose, 105 USPQ 237.

17. Claim 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay et al. (US 6,925,765) alone or alternatively in view of Hoffman, Jr. (US 3835604 A) and further in view of Chenoweth (US 4946738).

18. Fay and Hoffman are applied above.

19. The references do not teach using bicomponent fibers as per claims 4 and 14.

20. Chenoweth teaches a nonwoven material comprising a matrix consisting of glass fibers, solid or hollow homogeneous synthetic fibers, such as polyester, nylon and second, bi-component synthetic fibers which have been intimately combined with a thermosetting resin into a homogeneous mixture. This mixture is dispersed to form a blanket and melted to be formed into complexly curved and shaped configurations. See 1:1-30, 3:1-10, 4:30-68, Abstract.

21. It would have been obvious to one having ordinary skill in the art to have modified the panel of Fay and Hoffman to include bicomponent polyester fibers as claimed because Chenoweth teaches the fibers are used for reinforcement purposes and for insulating characteristics in curved and shaped configurations and panels as cited above. To the application of heat and bonding process steps, these are in a product claim, given little weight. See product by process rationale above.

### ***Response to Arguments***

22. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### *References of Interest*

The remaining references listed on form(s) 892 and/or 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

- US 6900147 B2 to Morman et al. teaches edges with different materials of different density than the core.
- US 6770339 B2 teaches decorative folded facing edges on an insulation panel

### *Conclusion*

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m.; alternate Fridays.

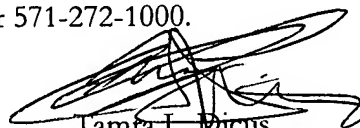


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tamra L. Dicus  
Examiner  
Art Unit 1794

December 2, 2007



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